

BFSLA



1984 to 2024: from Big Brother to AI

The 40th Annual Conference
of the Banking & Financial
Services Law Association

Thursday 5 September -
Saturday 7 September 2024
Sheraton Grand Mirage Resort, Gold Coast

CONFERENCE PROGRAM
AND REGISTRATION
BROCHURE

PRESIDENT'S MESSAGE

Dear Colleagues

I am pleased to invite you to attend the BFSLA's 40th annual conference, from Thursday 5 September 2024 to Saturday 7 September 2024 at the Sheraton Grand Mirage, on Queensland's glorious Gold Coast.

Our theme

Our theme for this year's conference, "1984 to 2024: from Big Brother to AI" invites us to reflect on the extraordinary journey of the past four decades in banking, financial services and insolvency law. It is a journey marked by significant technological advancements and regulatory changes that have reshaped our way of life.

Some of the papers from sessions at our conferences in the 1980s speak to the complications that Automatic Teller Machines brought into financial law. Those were the days of "trunk calls" between London and Sydney. Our 1984 speakers can hardly imagine the world we live in now in 2024, with our instant video calls anywhere in the world, multi-factor authentication on banking "apps" on mobile phones, drone robots, and cryptocurrencies! It is against this background that we have assembled an outstanding lineup of speakers this year who will explore topics such as financial asset tokenisation, de-banking, frauds and scams, to name but a few.

Our keynote speakers

This year we are thrilled to welcome The Right Honourable Lord Hamblen of Kersey, Justice of the Supreme Court of the United Kingdom, who will discuss the challenges of smart contracts.

We are also delighted to welcome The Honourable Justice Forrest Miller of the Supreme Court of New Zealand and The Honourable Justice Ashley Black of the Supreme Court of New South Wales, who will address us on "Trans-Tasman Retrospective – 40 years of Convergence and Divergence".

This year's conference is "In-Person" only

After careful thought and deliberation, the Board has decided not to stream or record the audio or video from the sessions at this year's conference. Meeting in person under the "Chatham House Rule" and without audio or video recording provides an invaluable opportunity for candid and open discussions. This rule, which ensures that participants can speak freely without fear of their comments being attributed outside the meeting, fosters a trusting environment where ideas can be exchanged honestly and without reservation. The face-to-face setting further enhances this dynamic, allowing for spontaneous, nuanced communication and deeper personal connections, and fostering collaboration in ways that virtual platforms cannot match. We look forward to greater energy and engagement at this year's conference!

I encourage you to join us at this year's conference to take full advantage of this unique opportunity to engage with our distinguished speakers, panellists, and fellow attendees. The conversations we have here, both formal and informal, are invaluable. The networking opportunities, whether during coffee breaks, meals, or evening receptions, are where some of the most significant professional connections, collaborative breakthroughs and friendships are born.

A milestone

This year's conference is particularly special as it will be our 40th – a significant milestone that underscores the Association's rich history and enduring commitment to excellence in banking, financial services and insolvency law. We look forward to acknowledging and celebrating some of the wonderful legal minds who have contributed to our Association over the years, including leading practitioners, exceptional judges such as Gageler CJ and Winkelmann CJ, Lords Mance, Neuberger and Sales, brilliant academics such as Sir Roy Goode QC and Professor John Stumbles, as well as leading barristers such as Dr Ian Spry QC.

Thank you

I extend my deepest thanks to our Conference Planning Committee and our volunteer members of the Board, each of whom has contributed selflessly of their time and expertise, and undertaken a huge amount of work in order to ensure the Association can host this year's annual conference. I also extend my thanks to our Sponsors, without whom our conference simply would not be possible.

Let us embrace the opportunity to reconnect, learn, and grow together. The insights we gain and the relationships we build at this conference will leave us better equipped to navigate the future of banking, financial services and insolvency law.

I look forward to seeing you all on the Gold Coast in September!



Matt Cunningham
President

KEYNOTE PRESENTERS

The Right Honourable Lord Hamblen of Kersey, Justice of the Supreme Court of the United Kingdom

Nicholas Archibald Hamblen, Lord Hamblen of Kersey became a Justice of the Supreme Court in January 2020.

Lord Hamblen was educated at St John's College, University of Oxford and Harvard Law School, and was called to the Bar (Lincoln's Inn) in 1981.

He practised at the Commercial Bar from 1982-2008. He was appointed Queen's Counsel in 1997, an Assistant Recorder in 1999 and a Recorder in 2000.

Lord Hamblen was appointed to sit as a Justice in the High Court in November 2008 and was a nominated Commercial Court Judge.

In February 2016 he was appointed a Lord Justice of Appeal.

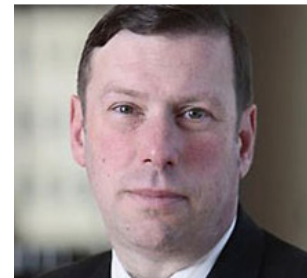


The Honourable Justice Ashley Black Supreme Court of New South Wales

Justice Black has been a Judge of the Supreme Court of New South Wales since 4 July 2011. He was previously a dispute resolution partner at Mallesons Stephen Jaques (now King & Wood Mallesons) where he practised primarily in commercial litigation and financial services regulation.

He was admitted as a solicitor in 1987 and was a Judge's Associate in the Federal Court of Australia in 1988. He holds a Bachelor of Arts, Bachelor of Laws and Master of Laws from the University of Sydney.

He is an Adjunct Professor at the University of Sydney Law School and is joint author of Securities and Financial Services Law, 10th ed, 2021 and Austin & Black's Annotations to the Corporations Act.



The Honourable Justice Forrest Miller Supreme Court of New Zealand

Justice Miller was admitted to the bar in 1981, and initially worked for Alexandra firm Bodkins Solicitors, before commencing practice with Chapman Tripp in Wellington in 1984. He joined the partnership in 1987, with a commercial litigation practice focused on securities, regulatory and competition law.

Justice Miller was appointed to the High Court bench in 2004 and was executive Judge for the Wellington circuit until 2012. He developed and ran the Earthquake List to respond to the Christchurch earthquakes by closely managing claims to decide questions of general significance quickly and expedite principled settlements in a large number of cases.

Justice Miller was appointed a Judge of the Court of Appeal in 2013. In the Court of Appeal he was responsible for developing electronic casebooks for daily use in criminal and civil jurisdictions. During the Covid-19 pandemic he worked with the Ministry of Justice and the profession, leading initiatives to allow courts to operate remotely and to allow courthouses to operate safely under various alert levels. In 2019 the University of Otago awarded the Judge an honorary doctorate for his services to the courts.

In 2022 the Judge was the Inns of Court Fellow at the Institute for Advanced Legal Studies at the University of London.

The Judge was appointed to the New Zealand Supreme Court in December 2023.



PROGRAM AT A GLANCE

The conference program at a glance is set out below. For the Academic Symposium, see page 8.

CONFERENCE

THURSDAY 5 SEPTEMBER

| | | |
|--------|----------------------------------|----------------------|
| 3.00pm | Registration opens | <i>Hotel Foyer</i> |
| 5.00pm | Welcome function | <i>Horizons Room</i> |
| 7.00pm | Future Leaders' reception | <i>Pearls Bar</i> |

FRIDAY 6 SEPTEMBER

| | | | |
|---------|-------------------|---|-----------------------------------|
| 9.00am | | Conference opening and welcome | <i>Grand Ballroom 1&2</i> |
| 9.00am | Plenary | Contractual challenges of smart contracts Keynote Speaker: The Right Honourable Lord Hamblen of Kersey , Justice of the Supreme Court of the United Kingdom Chair: Dr Nuncio D'Angelo , Partner, Norton Rose Fulbright | <i>Grand Ballroom 1&2</i> |
| 10.00am | | Morning break <i>Coffee cart sponsored by Equity Trustees</i> | <i>Grand Ballroom prefunction</i> |
| 10.30am | Concurrent | New Zealand regulatory update – winds of change Chair: Katrina Gardiner , Associate General Counsel, ANZ Bank New Zealand Speakers: Richard Massey , Partner, Bell Gully Emmeline Rushbrook , Partner, Russell McVeagh | <i>Grand Ballroom 1&2</i> |
| 10.30am | Concurrent | PPSA exposed: how reforms to the Australian PPSA regime might reshape our thinking and practices Chair: Helena Busljeta , Special Counsel, King & Wood Mallesons Speakers: Bruce Whittaker , Honorary Senior Fellow, Melbourne Law School Jock O'Shea , Partner, Ashurst | <i>Grand Ballroom 1&2</i> |

FRIDAY 6 SEPTEMBER (continued)

| | | | |
|---------|-------------------|--|----------------------------|
| 11.45am | Concurrent | <p><i>Obligations of successor trustees to removed trustees</i></p> <p>Chair: Dr Ann Wardrop, Honorary Senior Research Fellow, La Trobe University</p> <p>Speaker: Associate Professor Allison Silink, University of Technology Sydney</p> <p><i>Proceeds & the PPSA: equitable tracing or novel statutory principles?</i></p> <p>Chair: Dr Ann Wardrop, Honorary Senior Research Fellow, La Trobe University</p> <p>Speaker: Adam Waldman, Colin Phegan Associate Lecturer, University of Sydney Law School</p> | Grand Ballroom 1&2 |
| 11.45am | Concurrent | <p><i>Getting real with the new APLMA real estate finance facility agreement</i></p> <p>Chair: Brad Husband, Partner, Corrs Chambers Westgarth</p> <p>Speakers: Tony Berriman, Partner, MinterEllison Alison Clark, Executive Director, ANZ Karla Fraser, Partner, Allens</p> | Grand Ballroom 1&2 |
| 1.00pm | | Lunch break | Grand Ballroom prefunction |
| 2.00pm | Plenary | <p><i>Banks on the frontline: fraud and scams</i></p> <p>Chair: Janko Marcetic, Senior Associate, Chapman Tripp</p> <p>Speakers: James Ruddell, Barrister, Shortland Chambers Cushla Scholfield, Associate General Counsel, ANZ Bank New Zealand Narelle Smythe, Partner, Ashurst</p> | Grand Ballroom 1&2 |
| 3.15pm | | <p>Afternoon break</p> <p><i>Coffee cart sponsored by Equity Trustees</i></p> | Grand Ballroom prefunction |
| 3.45pm | Concurrent | <p><i>A new form of regulation? The role of industry standards in determining a breach of statutory obligations</i></p> <p>Chair: Kerryn Smith, Executive Manager Compliance, Financial Markets, Westpac Banking Corporation</p> <p>Speakers: Yu Zhang, Partner, Allens Patrick Lowden, Partner, Herbert Smith Freehills David Love, General Counsel, The Australian Financial Markets Association</p> | Grand Ballroom 1&2 |

FRIDAY 6 SEPTEMBER (continued)

| | | | |
|--------|-------------------|---|-----------------------|
| 3.45pm | Concurrent | <i>Syndicate democracy: the challenges and issues faced by agents and security trustees when deals go into enforcement/restructuring</i> Chair: Camilla Clemente , Partner, Ashurst Speakers: Paul Apáthy , Partner, Herbert Smith Freehills Gail Christopher , Partner, Gilbert + Tobin Kate White , Managing Director, GLAS Australia Leigh De Jong , Partner, MinterEllison | Grand Ballroom 1&2 |
| 5.00pm | | AGM and Board Meeting | Grand Ballroom 3 |
| 6.30pm | | Pre-dinner drinks <i>Sponsored by CSC</i> | Grand Terrace |
| 7.30pm | | Conference dinner | Grand Ballroom 1&2 |

SATURDAY 7 SEPTEMBER

| | | | |
|---------|-------------------|---|-------------------------------|
| 7.30am | Keynote | Opinions Committee breakfast Host: Helena Busljeta , Special Counsel, King & Wood Mallesons | Lagoon Room |
| 9.00am | Plenary | <i>Judicial case law update</i> Chair: Caitlin Murray , Partner, MinterEllison Speakers: The Honourable Justice Ashley Black , Supreme Court of New South Wales The Honourable Justice Forrest Miller , Supreme Court of New Zealand | Grand Ballroom 1&2 |
| 10.00am | | Morning break <i>Coffee cart sponsored by Equity Trustees</i> | Grand Ballroom prefunction |
| 10.30am | Concurrent | <i>Secured creditor interests: insights from insolvency challenges in Australia and New Zealand</i> Chair: Michelle Dean , Partner, Corrs Chambers Westgarth Speakers: Alex MacDuff , Partner, Russell McVeagh Natalie Tatasciore , Partner, King & Wood Mallesons | Grand Ballroom 1&2 |
| 10.30am | Concurrent | <i>De-banking: a thorny issue</i> Chair: Emma Peart , Senior Associate, Chapman Tripp Speakers: Sarah Salmond , Partner, MinterEllisonRuddWatts Chris Kerrigan , Partner, Allens | Grand Ballroom 1&2 |

SATURDAY 7 SEPTEMBER (continued)

| | | | |
|---------|-------------------|---|---|
| 11.45am | Concurrent | <i>Making distressed workouts work for directors: a cross-Tasman comparison of approaches to managing insolvent trading and wrongful trading risks</i> Chair: Josh Cairns , Partner, Simpson Grierson Speakers: Scott Abel , Partner, Buddle Findlay Joseph Hayes , Partner, Wexted Advisors Orla McCoy , Partner, Gilbert + Tobin | <i>Grand Ballroom 1&2</i> |
| 11.45am | Concurrent | <i>Tokenising financial and investment assets: is it a thing?</i> Chair: Paul Richter , Senior Lawyer, ANZ Speakers: Dr Anton Didenko , Senior Lecturer, University of New South Wales Urszula McCormack , Partner, King & Wood Mallesons | <i>Grand Ballroom 1&2</i> |
| 1.00pm | | Lunch break | <i>Grand Ballroom prefunction</i> |
| 1.00pm | | Future Leaders' lunch | <i>Terraces Restaurant (private area)</i> |
| 2.00pm | Plenary | <i>40th anniversary retrospective</i> Chair: Dr Nuncio D'Angelo , Partner, Norton Rose Fulbright Speakers: A panel of senior practitioners | <i>Grand Ballroom 1&2</i> |
| 3.00pm | | Conclusion of conference | <i>Grand Terrace</i> |
| 3.10pm | | Beach party | <i>Grand Terrace</i> |

PROGRAM AT A GLANCE

ACADEMIC SYMPOSIUM

THURSDAY 5 SEPTEMBER

| | | | |
|---------|----------------|---|------------------|
| 10:45am | | Coffee and registration | |
| 11:00am | Plenary | <i>Comparative law approaches to individual financial advice</i> Professor Jodi Gardner, University of Auckland | Mirage Boardroom |
| 11:45am | Plenary | <i>'Technology neutrality' in banking and financial services regulation: is it still relevant in the digital age?</i> Professor Andrew Godwin, Melbourne Law School | |
| 12:30pm | | Lunch break | |
| 1:00pm | Plenary | <i>Australian appellate courts on PPSA: a decade of experience</i> Professor Sheelagh McCracken, Sydney Law School | |
| 1:45pm | Plenary | <i>Atomic settlement – much ado about nothing</i> Dr Anton Didenko, University of New South Wales | |
| 2:30pm | | Coffee break | |
| 2:45pm | Plenary | <i>The test for 'insolvency' and long-term future debt: is time a resource?</i> Associate Professor Mark Wellard, Southern Cross University | |
| 3:30pm | Plenary | <i>Who should be responsible for deep fake fraud: banks' duty to follow instructions, liability policies and other regulatory challenges in the age of AI</i> Professor Jeannie Patterson, Melbourne Law School | |
| 4:15pm | | Closing discussion | |

THE PROGRAM IN DETAIL

CONFERENCE

THURSDAY 5 SEPTEMBER

3:00pm

Registration opens

5:00pm

Welcome function

7:00pm

Future Leaders' reception

7:00pm

Dinner – own arrangements

FRIDAY 6 SEPTEMBER

9:00am

Conference opening and welcome

9:00am

Contractual challenges of smart contracts

Keynote speaker: **The Right Honourable Lord Hamblen of Kersey**, Justice of the Supreme Court of the United Kingdom

Chair: **Dr Nuncio D'Angelo**, Partner, Norton Rose Fulbright

Plenary

FRIDAY 6 SEPTEMBER (continued)

10:00am **Morning break**
Coffee cart sponsored by Equity Trustees

10:30am ***New Zealand regulatory update – winds of change***

Concurrent

This session will explore recent changes and proposed amendments to New Zealand's financial services regulatory frameworks. It will address:

- the current status of the Conduct of Financial Institutions (COFI) regime including the Government's recent proposals to issue further regulatory guidance on the COFI regime and the FMA's recent proposal to adopt a "fair outcomes-focused" approach to regulating providers of financial products and services
- amendments to the *Credit Contracts and Consumer Finance Act (CCCFA)* including changes to the current affordability and suitability regulations and the potential significance of the transfer of regulatory oversight of the CCCFA from the Commerce Commission to the FMA.

Chair: **Katrina Gardiner**, Associate General Counsel, ANZ Bank New Zealand

Speakers: **Richard Massey**, Partner, Bell Gully
Emmeline Rushbrook, Partner, Russell McVeagh

10:30am ***PPSA exposed: how reforms to the Australian PPSA regime might reshape our thinking and practices***

Concurrent

On 22 September 2023, the Australian Federal Government published for consultation a comprehensive reform package, including exposure draft legislation, to amend the *Personal Property Securities Act 2009 (Cth)* and *Personal Property Securities Regulations 2010 (Cth)*. With further draft legislation anticipated this year, panellists, including the author of the Whittaker Review, Bruce Whittaker, will consider how this reform will reshape our thinking and practices.

Chair: **Helena Busljeta**, Special Counsel, King & Wood Mallesons

Speakers: **Bruce Whittaker**, Honorary Senior Fellow, Melbourne Law School
Jock O'Shea, Partner, Ashurst

FRIDAY 6 SEPTEMBER (continued)

11:45am

Concurrent

Obligations of successor trustees to removed trustees

In February 2024 the High Court granted special leave to appeal the decision of the New South Wales Court of Appeal in *Jaken Properties Australia Pty Ltd v Naaman* [2023] NSWCA 214 ('*Jaken*') on the question of whether a successor trustee owes a fiduciary duty to a former trustee not to deal with trust assets so as to destroy, diminish or jeopardise a former trustee's right of indemnity or exoneration from those assets. The Court of Appeal majority concluded that any duty owed to a former trustee in relation to trust assets was not fiduciary in nature. This session explores a number of important and uncertain questions that arose in the *Jaken* litigation and the consequences of characterising the rights and obligations between a former and successor trustee in different ways.

Chair: **Dr Ann Wardrop**, Honorary Senior Research Fellow, La Trobe University

Speaker: **Associate Professor Allison Silink**, University of Technology Sydney

Proceeds & the PPSA: equitable tracing or novel statutory principles?

This presentation will explore whether 'proceeds' under *the Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Act 1999* (NZ) (the 'PPSAs') should be interpreted against equitable tracing, or a set of novel statutory tracing principles. The PPSAs provide that a security interest extends to proceeds, which are defined as 'identifiable or traceable' personal property arising from several widely drawn categories. No Australian or New Zealand case thus-far has interpreted these words. The leading authority is the Canadian decision of *Agricultural Credit Corporation of Saskatchewan v Pettyjohn* (1991) 79 DLR (4th) 22 ('*Pettyjohn*'), which held that the words 'identifiable or traceable' require the development of novel statutory tracing rules. This session will consider whether we should follow *Pettyjohn* and, if not, how we should interpret proceeds under the PPSAs.

Chair: **Dr Ann Wardrop**, Honorary Senior Research Fellow, La Trobe University

Speaker: **Adam Waldman**, Colin Phegan Associate Lecturer, University of Sydney Law School

11:45am

Concurrent

Getting real with the new APLMA real estate finance facility agreement

The Asia Pacific Loan Market Association (APLMA) real estate finance facility agreement is launching this year and will set a new benchmark in the property finance market. Panellists will provide an insight into the development of this document including a discussion of the following issues:

- how (typical) real estate finance financial covenants work and what they are testing;
- insurance provisions and why they matter; and
- proceeds and the structure of project accounts.

Chair: **Brad Husband**, Partner, Corrs Chambers Westgarth

Speakers: **Tony Berriman**, Partner, MinterEllison

Alison Clark, Executive Director, ANZ

Karla Fraser, Partner, Allens

FRIDAY 6 SEPTEMBER (continued)

1:00pm

Lunch break

2:00pm

Plenary

Banks on the frontline: fraud and scams

Banks are firmly in the firing line on a daily basis as the volume, sophistication, and publicity of scams grows globally. This panel session will provide a range of perspectives from private practitioners, banks and regulators on the scale of the problem, how to address scams that have happened, preventative practices and how to strike an appropriate balance when responding to scams in the future. It will consider:

- the current state of the law on bankers' duties and liabilities in light of the UK Supreme Court's judgment in *Philipp v Barclays Bank UK PLC* [2023] UKSC 25, and its subsequent application in Australia and New Zealand;
- the approach of AFCA and New Zealand's Banking Ombudsman in response to complaints by victims of scams;
- steps banks are taking to prevent against scams and to mitigate against liability; and
- structural and policy changes that could be made to strike a balance between the interests of banks and depositors in responding to scams.

Chair: **Janko Marcetic**, Senior Associate, Chapman Tripp

Speakers: **James Ruddell**, Barrister, Shortland Chambers

Cushla Scholfield, Associate General Counsel, ANZ Bank New Zealand

Narelle Smythe, Partner, Ashurst

3:15pm

Afternoon break

Coffee cart sponsored by Equity Trustees

3:45pm

Concurrent

A new form of regulation? The role of industry standards in determining a breach of statutory obligations

Courts appear to be supporting ASIC's use of OTC financial markets industry standards to establish breaches of the general obligations on financial services licensees to provide financial services 'efficiently, honestly and fairly' under s912A(1)(a) of the Corporations Act 2001 (Cth). Is this a new form of financial services regulation, and why has ASIC adopted this approach rather than legislation and subordinate regulation? How does this compare to experiences in equivalent offshore markets?

Chair: **Kerryn Smith**, Executive Manager Compliance, Financial Markets, Westpac Banking Corporation

Speakers: **Yu Zhang**, Partner, Allens

Patrick Lowden, Partner, Herbert Smith Freehills

David Love, General Counsel, The Australian Financial Markets Association

FRIDAY 6 SEPTEMBER (continued)

3:45pm

Concurrent

Syndicate democracy: the challenges and issues faced by agents and security trustees when deals go into enforcement/restructuring.

This session will look at how agents and security trustees manage relationships between the borrower and lenders in a syndicated loan, particularly where that relationship is fractured. It will consider:

- lender-on-lender violence – when majority lenders use transaction structures to benefit themselves over minority creditors.
- acting on discretion – what happens when agents can't get a majority? When should an agent or security trustee use its own discretion to accelerate and enforce on their own, when they can't get instructions?
- conflict (and other) issues with respect to independent representation for agents and security trustees.

Chair: **Camilla Clemente**, Partner, Ashurst

Speakers: **Paul Apáthy**, Partner, Herbert Smith Freehills

Gail Christopher, Partner, Gilbert + Tobin

Kate White, Managing Director, GLAS Australia

Leigh De Jong, Partner, MinterEllison

5:00pm

AGM and Board Meeting

6:30pm

Pre-dinner drinks

Sponsored by CSC

7:30pm

Conference dinner

Dress code: Smart casual

SATURDAY 7 SEPTEMBER

7:30am

Opinions Committee breakfast

This session is for delegates interested in hearing about updates to BFSLA opinion templates.

Host: **Helena Busljeta**, Special Counsel, King & Wood Mallesons

9:00am

Judicial case law update

Chair: **Caitlin Murray**, Partner, MinterEllison

Speakers: **The Honourable Justice Ashley Black**, Supreme Court of New South Wales
The Honourable Justice Forrest Miller, Supreme Court of New Zealand

Plenary

10:00am

Morning break

Coffee cart sponsored by Equity Trustees

10:30am

Secured creditor interests: insights from insolvency challenges in Australia and New Zealand

This session will:

- delve into the nuances of antecedent transaction avoidance regimes
- explore risk areas where securities might be invalidated in insolvency proceedings, and
- offer insights from key case law developments from both jurisdictions on the powers available to company liquidators in Australia and New Zealand when challenging security interests to recover funds or property for the benefit of unsecured creditors.

Chair: **Michelle Dean**, Partner, Corrs Chambers Westgarth

Speakers: **Alex MacDuff**, Partner, Russell McVeagh
Natalie Tatasciore, Partner, King & Wood Mallesons

Concurrent

10:30am

De-banking: a thorny issue

The Nigel Farage case may have made headlines around the world, but this issue has been under review for a number of years in various jurisdictions – including Australia and New Zealand. This will be a three-part session covering when can a person be de-banked, when should a person be de-banked, and what does the future hold?

Chair: **Emma Peart**, Senior Associate, Chapman Tripp

Speakers: **Sarah Salmond**, Partner, MinterEllisonRuddWatts
Chris Kerrigan, Partner, Allens

Concurrent

SATURDAY 7 SEPTEMBER (continued)

11:45am **Making distressed workouts work for directors: a cross-Tasman comparison of approaches to managing insolvent trading and wrongful trading risks**

Concurrent

This session offers a comparative analysis of New Zealand's wrongful trading regime and Australia's insolvent trading laws and practical strategies to assist directors to steer financially distressed businesses through turnaround scenarios. Our expert speakers will explore these parallel regimes and their implications for directors and creditors in distressed restructurings.

Chair: **Josh Cairns**, Partner, Simpson Grierson

Speakers: **Scott Abel**, Partner, Buddle Findlay
Joseph Hayes, Partner, Wexted Advisors
Orla McCoy, Partner, Gilbert + Tobin

11:45am **Tokenising financial and investment assets: is it a thing?**

Concurrent

Art works can be represented by non-fungible tokens (NFTs) – but so can financial and investment assets such as bonds, loans, shares and even carbon credits. Why might financial institutions be interested in tokenisation? How do tokenised assets fit within the existing legal and financial regulatory framework, and what does that mean for transactions? Using a case study approach, this session will explore key regulatory and transaction considerations when dealing with tokenised assets, including financial services law implications, challenges with taking security and more.

Chair: **Paul Richter**, Senior Lawyer, ANZ

Speakers: **Anton Didenko**, Senior Lecturer, University of New South Wales
Urszula McCormack, Partner, King & Wood Mallesons

1:00pm

Lunch break

Future Leaders' lunch

2:00pm

40th anniversary retrospective

Plenary

The British writer LP Hartley famously wrote that “the past is a foreign country; they do things differently there”. The BFSLA held its first annual conference in 1984. The 4 decades since have seen seismic shifts in all of the legal and regulatory disciplines that the Association serves, on both sides of the Tasman. As we face into a digital/crypto/AI future, change in these areas is unrelenting. In this session, chaired and moderated by Dr Nuncio D’Angelo, a panel of senior practitioners will offer their perspectives on those changes, and their predictions for the future. There might even be a few laughs....

Chair: **Dr Nuncio D’Angelo**, Partner, Norton Rose Fulbright

Speakers: A panel of senior practitioners

3:00pm

Conclusion of conference

3:10pm

Beach party

THE PROGRAM IN DETAIL

ACADEMIC SYMPOSIUM

THURSDAY 5 SEPTEMBER

10:45am

Coffee and registration

11:00am

Plenary

Comparative law approaches to individual financial advice

Many jurisdictions around the world draw a line between investors on the basis of financial means - providing higher levels of protection to those with less money to invest. Whilst this initially appears to be justified, recent events have called into question whether this approach is justified and whether higher-income individuals also need additional protection. The increased cost of living, increased life expectancy and frequency of fraudulent investment scams challenge the traditional distinction between 'sophisticated' and 'unsophisticated' investors. Some jurisdictions have responded to this challenge by increasing the level of means, creating an 'opt-in' system or utilising other forms of protection, but they do not appear to be sufficient responses. This paper questions whether a return to the traditional distinction of consumer and investor is a better way to respond and ensure adequate protection for those making important investment decisions about their ongoing retirement and living costs.

Professor Jodi Gardner, University of Auckland

11:45am

Plenary

'Technology neutrality' in banking and financial services regulation: is it is still relevant in the digital age?

The past decade has seen extraordinary growth in technological innovation. In relation to financial services, innovation has been driven by financial technology or 'Fintech' and has been spurred in particular by blockchain technology and artificial intelligence more broadly. The innovations include the following: new ways of raising finance, such as initial coin offerings; new means of exchange for payment purposes, such as cryptocurrencies; new asset classes, such as crypto assets (which include cryptocurrencies and tokens more broadly); new ways of delivering banking and financial services, such as robo-advice; and new forms of business, such as decentralised autonomous organisations.

For many years, the principle of technology neutrality has been a guiding principle for banking and financial services regulation. Technological innovation, however, has presented challenges in this regard. This paper will explore whether the principle of technology neutrality is still relevant and, if so, how and to what extent.

Professor Andrew Godwin, Melbourne Law School

12:30pm

Lunch break

THURSDAY 5 SEPTEMBER (continued)

1:00pm

Australian appellate courts on PPSA: a decade of experience

Plenary

This paper offers a thematic analysis of Australian appellate case law on the Personal Property Securities Act 2009 (Cth). It explores how Australian appellate courts have wrestled over the last decade with challenges posed by the Australian legislation.

Professor Sheelagh McCracken, Sydney Law School

1:45pm

Atomic settlement - much ado about nothing

Plenary

The concept of 'atomic settlement' has been hailed by its proponents as a key enabler of innovative financial market infrastructures of the future that ensures that both legs of the post-trade settlement process occur simultaneously, thereby eliminating counterparty risks. While the potential of certain technologies, like blockchain and smart contracts, to enable atomic settlement of assets has been investigated by multiple regulators across the globe, the distinguishing features of atomic settlement require a deeper analysis from a legal perspective – considering the existence of related concepts in financial regulation (such as 'delivery versus payment') that need to be distinguished from it, as well as inconsistent use of the term by different stakeholders. This session will provide a deep dive into the mechanics of 'atomic settlement' and explore whether (and how) this concept could disrupt the legal framework for clearing and settlement facilities in Australia.

Dr Anton Didenko, University of New South Wales

2:30pm

Coffee break

2:45pm

The test for "insolvency" and long-term future debt: is time a resource?

Plenary

A company that, on the balance of probabilities, is unable to pay a long-term, future debt may still be solvent. That appears to be a takeaway from the New South Wales Court of Appeal's decision in *Anchorage Capital Master Offshore Ltd v Sparkes* [2023] NSWCA 88 ("Arrium"), a case that arose from the collapse of Arrium Group, the steelmaker and mining consumables business. Arrium presented the opportunity for an appellate court to clarify the relevance of long term, future debts in applying the test for insolvency under 95A of the Corporations Act 2001 (Cth) ("the Act"). Arguably however, this "forward looking" aspect of the s 95A test has been further complicated by the Court's endorsement of different standards of proof (or degrees of certainty) for short-term debts and long-term debts. This paper will consider whether s 95A is fit for purpose in providing a workable test for solvency.

Associate Professor Mark Wellard, Southern Cross University

THURSDAY 5 SEPTEMBER (continued)

3:30pm

Plenary

Who should be responsible for deep fake fraud: banks' duty to follow instructions, liability policies and other regulatory challenges in the age of AI

This paper considers the problematic case of deepfakes created by artificial intelligence and used to defraud individuals. In *Philipp v Barclays Bank UK PLC* [2023] UKSC 25 the English Supreme Court held that a bank must carry out the instruction of its customers promptly and should not concern itself with the '*wisdom or risks of its customer's payment decisions*'. The court considered that whether banks should be liable to reimburse the fraud victim and in what circumstances were questions for parliament. Many jurisdictions are currently grappling with questions of whether and how to regulate the generative AI that makes deepfakes possible. Included in these considerations are the question of redress for defrauded individuals and the incentives that might be provided for banks, and other intermediaries such as AI developers and digital platforms, to take more care against the risks of deep fake fraud. This paper considers the various strategies that have been proposed and assesses their likely effect, including the consequences of intervention including in delaying following payment instructions.

Professor Jeannie Patterson, Melbourne Law School

4:15pm

Closing discussion and invitation to speakers to network with Conference delegates at the welcome function

SOCIAL FUNCTIONS

THURSDAY 5 SEPTEMBER

5:00pm Welcome function
Drinks and canapes at the
Horizons Room

7:00pm Future Leaders' reception

FRIDAY 6 SEPTEMBER

6:30pm Pre-dinner drinks

7:30pm Conference dinner

SATURDAY 7 SEPTEMBER

1:00pm Future Leaders' lunch

3:10pm Beach party

DELEGATE FEES

All amounts are expressed in Australian dollars. As the conference is being held in Australia, all delegate fee amounts include AUS GST of 10%.

Via the online registration link on page 21 you register via either the NZ or Australian link to register and pay.

Delegates are invited to take advantage of the discounted rates for members by joining the BFSLA as part of their registration process. You can access the membership application forms at <https://bfsla.org/membership-to-bfsla/>.

| | | Early bird fee (by 26 July) | Full fee |
|----------------------------|-------------|--|-----------------|
| General rates | Members** | \$2,150 | \$2,400 |
| | Non-members | \$2,500 | \$2,800 |
| In-house lawyers | Members** | \$995 | \$1,150 |
| | Non-members | \$1,250 | \$1,450 |
| Full-time academics | Members | \$895 | \$1,095 |
| | Non-members | \$1,150 | \$1,395 |
| Full-time students | Members | \$895 | \$1,095 |
| | Non-members | \$1,150 | \$1,395 |

| General Member Group Rate (5 plus) early bird | General Member Group Rate (5 plus) full |
|---|---|
| First 5 @ \$2,150 full price Subsequent registrations at \$1,250 | First 5 @ \$2,400 full price Subsequent registrations at \$1,450 |

****Group Discounts: For groups of more than 5 attendees from the same organisation please contact Julia (julia@bfsla.org) for details.**

CONFERENCE REGISTRATION

You can register for the conference via the link below.

CONFERENCE REGISTRATION

Click the above link to register online

The old-fashioned way

If you are unable to use the link for any reason, you can register by completing the form on pages 21 to 23 and emailing it to Julia at Julia@bfsla.org. We will then process your registration and send you a confirmation and invoice.

CANCELLATIONS

Our cancellation and refunds policy is set out on page 25.

BFSLA ABN: 61 006 354 089, BFSLA NZBN: 9429042481614

BFSLA 40TH ANNUAL CONFERENCE REGISTRATION FORM

Please print clearly, scan and send this form to Julia@bfsla.org

Surname _____ Title: Mr, Mrs, Ms, Dr, Professor (other) _____

Given name _____ Preferred name for name badge _____

Position _____

Postal address _____

_____ Post code _____ Country _____

Phone () _____ Mobile _____

Email address: *(Please print clearly)* _____

REGISTRATION DETAILS

Please TICK the appropriate category

EARLY BIRD FEES for bookings made and paid by Friday 26 July

- | | |
|--|--|
| <input type="checkbox"/> Member general \$2,150 | <input type="checkbox"/> Non-Member general \$2,500 |
| <input type="checkbox"/> Member In-house lawyer \$995 | <input type="checkbox"/> Non-member In-house lawyer \$1,250 |
| <input type="checkbox"/> Member full-time academic / student \$895 | <input type="checkbox"/> Non-Member full-time academic / student \$1,150 |

FULL FEES for bookings made and paid after Friday 26 July

- | | |
|--|--|
| <input type="checkbox"/> Member general \$2,400 | <input type="checkbox"/> Non-Member general \$2,800 |
| <input type="checkbox"/> Member In-house lawyer \$1,150 | <input type="checkbox"/> Non-member In-house lawyer \$1,450 |
| <input type="checkbox"/> Member full-time academic / student \$1,095 | <input type="checkbox"/> Non-Member full-time academic / student \$1,395 |

REGISTRATION FEE TOTAL \$ _____

DIETARY REQUESTS

Please specify any allergies or dietary requirements: _____

MEAL BOOKINGS

All meals indicated below are INCLUSIVE for ALL DELEGATES, but to assist with catering please CONFIRM your attendance at the following functions:

- Welcome function** – Thursday 5 September
- Lunch** – Friday 6 September
- Conference dinner** – Friday 6 September
- Opinions Committee breakfast** – Saturday 7 September
- Regular lunch** – Saturday 7 September
- or
- Future Leaders' lunch** – Saturday 7 September
- Beach party** – Saturday 7 September

Attendance at events during the Conference

For the BFSLA conference we offer delegates an opportunity to extend their conference experience with the following events that are included within the registration price. However, please note that each event is catered for and we would appreciate if the intended delegate considers and agrees to the attendance to ensure they do wish to attend. Please indicate below if you would like to attend the following events (please note that this is included in the registration fees):

- Academic Symposium on Thursday 5 September**
 All day Half day afternoon (tick one session if you wish to attend)
- Future Leaders' reception at 7:00pm on Thursday 5 September**
- Opinions Committee breakfast at 7:30am on Saturday 7 September**
 This event is for interested delegates in the area of updates on opinion templates
- Future Leaders' lunch at 1:00pm on Saturday 7 September**
 This event is for new and younger professionals within BFSLA to meet and network
- Beach party on conclusion of conference at 3:10pm on Saturday 7 September**
 This event is for everyone to celebrate the success of the conference

**BFSLA 40TH ANNUAL CONFERENCE
NON ONLINE REGISTRATION FORM**

CATERING REQUIREMENTS

DIETARY REQUESTS FOR DELEGATE

Lunch is included for in-person delegates.

Please specify any dietary requirements: _____

ACCOMPANYING PERSONS

In-person delegates are welcome to bring accompanying persons to the conference lunch and dinner.

Name(s) _____

Please book the following:

Lunch Tickets @ \$55 per person \$ _____

Dinner Tickets @ \$250 per person \$ _____

TOTAL GUEST CATERING FEES \$ _____

IMPORTANT NOTE: All amounts are expressed in the currency of your conference location. All catering fees include GST at the rate of AUS GST of 10%.

Please specify any dietary requirements for accompanying persons: _____

PAYMENT TOTALS

Registration fee total (from page 21) \$ _____

Guest catering fees (from this page) \$ _____

TOTAL PAYMENT \$ _____

PAYMENT OPTIONS

- EFT in Australian dollars to: CBA BSB: 064-451 Account: 1006 0612
- EFT in New Zealand dollars to: ANZ Account: 01 0129 00475760 00
- Credit card – this can be actioned on registration, otherwise call Julia on 64 21 966 679 to pay over the phone.

PAYMENTS BY CREDIT CARD

Please note that a service fee of 1.5% applies to Visa and MasterCard, and of 3% to AMEX credit card payments. We are not able to accept payment by Diners.

ACKNOWLEDGEMENT

By registering for the conference, you acknowledge and agree to the Cancellation & Refund Policy and the BFSLA Policies on page 25.

Your name and employer/organisation will be included in the list of conference delegates made available to conference sponsors and delegates unless you indicate otherwise below.

No, thank you.

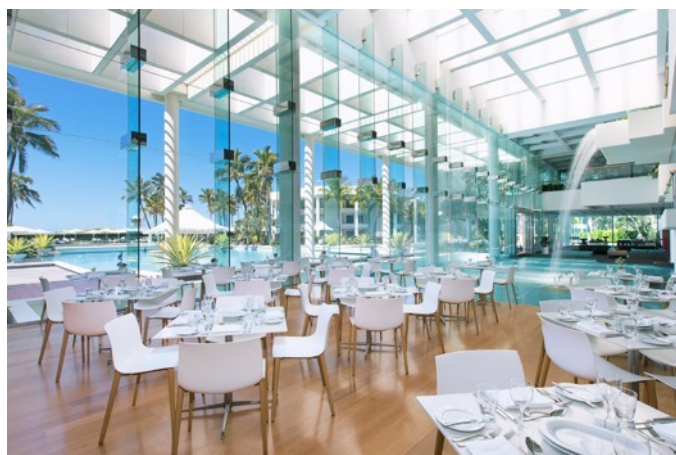
ACCOMMODATION

Sheraton Grand Mirage Resort, Gold Coast, 71 Sea World Drive, Main Beach, Queensland 4217

We have secured competitive rates for all BFSLA delegates at the Sheraton Grand Mirage.

BFSLA conference room rate \$385 per night

Rates are quoted in **Australian dollars**. They include GST of 10% and are for Sole/Twin or Double occupancy



Below is the link to the Sheraton Mirage Gold Coast accommodation booking website. All accommodation must be booked directly with the Sheraton Mirage via the online link or by calling +61 1800 073 535. Please remember to quote **BFSLA Conference 2024** for the conference rate.

ACCOMMODATION BOOKING

If unable to use the Sheraton Mirage online link internally please call the reservations team for assistance on 61 07 5577 0000 or email goldcoast.00372@marriott.com Please note it is very important not to send credit card details by email.

CANCELLATION & REFUND POLICY

In-person attendance

Substitution: If you had planned to attend a conference venue in person, you are welcome to substitute someone from your organisation at no extra cost. Please let us know your colleague's name and details no later than 48 hours prior to the conference.

Cancellation: Alternatively, a full refund less a \$50 service charge will be made for cancellations received in writing (by email) 10 working days or more prior to the conference. Regrettably, no refund is available for cancellations that are made less than 10 working days prior to the conference.

Please advise us as soon as possible so that we can convert your registration type.

If you have also registered to attend the conference dinner, we will refund 50% of the dinner fee. Unfortunately, we are unable to provide a full refund in these circumstances as the full cost of the dinner remains payable to the conference venue.

BFSLA POLICIES

Privacy Statement

The Banking and Financial Services Law Association's privacy statement is available on our website (www.bfsla.org/our-policies/).

Responsible Behaviours Policy

By registering for the conference, you agree to comply with the BFSLA's Responsible Behaviours Policy. A copy of the policy is available on our website (www.bfsla.org/our-policies/).

2024 CONFERENCE PLANNING COMMITTEE

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